

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 02-0245**

**Gaming Card Excise Tax  
Calendar Years 1998, 1999, and 2000**

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**ISSUE(S)**

**I. Gaming Card Excise Tax – Qualified and Non-Qualified**

**Authority:** IC 4-32-15-1 through IC 4-32-15-6; 45 IAC 18-4-2; 45 IAC 18-5-2  
*Muncie Novelty v. Department of State Revenue*, 20 N.E.2d 779 (Ind. Tax 1999).

Taxpayer protests the imposition of GCE tax.

**II. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the imposition of a penalty.

**STATEMENT OF FACTS**

The Taxpayer states it accepted and paid the correct tax for qualified organizations at 10% and non-qualified organizations at 5% of its sales. The taxpayer was audited as a licensed distributor of charity gaming devices such as pull-tabs, tip boards, punchboards, and bingo cards and supplies. Upon audit it was discovered that the taxpayer failed to maintain invoices consecutively and the customer's name and address were not included on all invoices. Numerous invoices were found in each of the audited years that stated "cash" in the name section with no further information about the customers. These invoices did not contain the taxpayer's name or distributor license number or, obviously, the customer's license number. The invoices contained a description of the item being purchased and the quantity of cases but did not include serial numbers of the purchases. A record of the serial numbers of the merchandise being sold was kept in the sales journals. Excise tax was charged to the customers on the invoices that included the customer's name with the exception of the bingo card sales, which were not subject to the tax. Sales tax was calculated on the invoices that were "cash

sales”. The sales tax was remitted on these sales. In most cases, the sales tax was not collected from the customers but was paid by the taxpayer.

Most of the taxpayer’s invoices listed the name of the qualified non-for-profit organization to which the sales were made. The gaming card excise tax was listed as a separate line item on these invoices and was collected from the customers at the rate of ten percent (10%) of the retail price. In each year of the audit period, the taxpayer made numerous cash sales. The taxpayer did not collect the gaming card excise tax or sales tax on these cash sales in most cases. The forms ST-103 sales tax returns were filed monthly and the appropriate amount of sales tax was remitted on the total retail price of the cash sales. Thus, the taxpayer paid the sales tax rather than collect it from the customers. The taxpayer was aware that at least a portion of the sales to cash-paying customers was made to representatives of qualified organizations but, for whatever reason, these customers wished to remain anonymous. The taxpayer was unable to identify the cash sales that were made to representatives of qualified organizations or non-qualified organizations. It is assumed that these sales were made to qualified organizations and the cash sales are subject to the gaming card excise tax. The cash sales were reduced by the sales of bingo cards. The gaming card excise tax was calculated on net sales with credit being given for the sales tax paid in error by the taxpayer.

**I. Charity Gaming Excise Tax – Qualified and Non-Qualified**

**DISCUSSION**

Taxpayer was found not to be in compliance with the tax laws of this state and was assessed tax accordingly.

Indiana Codes state that licensed entities such as the taxpayer are liable for payment of the tax at the time it “transports pull tabs, punch boards, or tip boards to qualified organizations in Indiana for resale by those qualified organizations.” Also the code requires the company to maintain satisfactory records that include the following:

- 1) The date of sale
- 2) The customer name and business
- 3) A full description of the item sold, including the serial number of the products sold
- 4) The quantity and sales price of each item
- 5) The manufacturer’s or distributor’s license number; [and]
- 6) The gaming card excise tax due on the sale

The Indiana Tax Court affirmed in *Muncie Novelty v. Department of State Revenue*, 720 N.E.2d 779 (Ind. Tax 1999) that the Indiana Department of Revenue was correct in finding the taxpayer liable for the Charity Gaming Excise Tax for sales to all unidentified customers. Likewise, the Taxpayer at issue falls into the court’s ruling that it is subject to the Gaming Excise Tax because

it failed to comply with record keeping.

**FINDING**

Taxpayer's protest is denied.

**II. Tax Administration—Penalty**

**DISCUSSION**

Taxpayer merely states it was not aware of the penalty law.

Taxpayer was assessed a penalty because he was in violation of the Indiana Tax Code and regulations and has not shown reasonable cause.

**FINDING**

Taxpayer's protest is denied.